

BEFORE THE

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Arizona Corporation Commission

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**IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S
COMPLIANCE WITH § 271 OF THE
TELECOMMUNICATIONS ACT OF 1996**

Docket No. T-00000A-97-0238

**AT&T'S REPLY TO QWEST'S
OPPOSITION TO AT&T'S MOTION
TO REQUIRE QWEST TO
SUPPLEMENT THE RECORD**

AT&T Communications of the Mountain States, Inc. and TCG Phoenix
(collectively, "AT&T") hereby reply to Qwest's Opposition to AT&T's Motion to
Require Qwest to Supplement the Record.

I. INTRODUCTION

Qwest does not want the side agreements it has entered into with competitive local exchange carriers ("CLECs") to be subject to review in the section 271 proceeding. Qwest believes it would be "second-guessing" Qwest if the Arizona Corporation Commission were to review Qwest's determination whether an agreement between Qwest and a CLEC must be filed with the Commission pursuant to section 252 of the Telecommunications Act of 1996 ("Act"). Qwest also believes the issue is moot because it has filed the agreements with the Arizona Commission.¹ Qwest makes a number of

¹ Opposition at 1-2.

additional arguments: AT&T has not provided any grounds for delaying the proceeding,² and the Minnesota Complaint raises complex issues that do not belong in this section 271 proceeding.³ All of Qwest's arguments are without merit.

The issue is – is Qwest's failure to file interconnection agreements with the Commission within the scope of the public interest analysis in this proceeding? AT&T believes that it is imperative to review the contents of the agreements, as the contents leave no question Qwest was willing to enter into agreements with CLECs that were not offered to other CLECs. One CLEC obtained interconnection services and network elements that they arguably were entitled to by law in exchange for an agreement not to participate in and oppose Qwest's section 271 applications.⁴ AT&T firmly believes that whether Qwest is complying with federal law in is the public interest, and the Federal Communications Commission ("FCC") concurs.

II. ARGUMENTS

Qwest suggests that it alone should be permitted to decide whether an agreement must be filed with the Commission under section 252 of the Act.⁵ As AT&T stated in its Motion, pursuant to section 252(e) of the Telecommunications Act of 1996, all interconnection agreements adopted by *negotiation* or arbitration shall be submitted to

² *Id.* at 2.

³ *Id.* at 4.

⁴ Letter dated November 15, 2000, from Greg Casey, Executive Vice President Wholesale Markets, Qwest, to Richard A. Smith, President and Chief Operating Officer, Eschelon Telecom, Inc., entitled CONFIDENTIAL AGREEMENT. "During development of the Plan, and thereafter, if an agreed plan is in place by April 30, 2001, Eschelon agrees not to oppose Qwest's efforts regarding Section 271 approval or to file complaints before any regulatory body concerning issues assuring out of the Parties Interconnection Agreements." One of the purposes of the Implementation Plan was "to develop a multi-state interconnection agreement." The Plan was signed July 31, 2001. AT&T can find no record of Eschelon's participation in this proceeding after the October 12, 2000, workshop on the provision of network elements and UNE-P. Eschelon did not participate in the follow-up workshops held November 15-17, 2000.

⁵ Opposition at 1, 4-8.

the state commission for approval. Interconnection agreements generally contain the terms for obtaining interconnection, services or network elements pursuant to 251 of the Act. Although section 251 permits the incumbent local exchange carrier and another carrier to voluntarily negotiate without regard to the requirements of section 251(b) and (c), section 252(a) makes it clear that the agreement must be filed with the state commission under subsection (e). Qwest alone believes it should make the determination whether a contract must be filed with the Commission, based on how it categorizes the agreement.

However, Qwest's position has no identifiable legal standard – the Act does: Are the terms and conditions being negotiated or arbitrated related to a request for interconnection, services, or network elements pursuant to section 251. If the issue being negotiated affects the interconnection between Qwest and a CLEC, the provision of services between Qwest and a CLEC or the provision of network elements by Qwest to a CLEC, then any agreement reflecting these negotiations must be filed with the Commission.

Qwest argues that it has submitted the contracts with the Staff or Commission.⁶ AT&T is not aware that the agreements have been filed for approval by the Commission or that the terms are available to other carriers.⁷ Simply filing with the Commission is inadequate and does not meet the requirements of the Act. Furthermore, Qwest has not indicated whether all agreements have been filed, or just some subset of the agreements that AT&T has requested that Qwest be ordered to file.

⁶ *Id.* at 3.

⁷ In fact, Qwest cancelled a number of agreements with Eschelon so it did not have to provide the terms to other carriers. See note 6 of AT&T's Motion.

Qwest argues that the section 271 review has been going on a long time and that AT&T has “an obvious self-interest in delaying the proceeding.”⁸ The simple response is, had Qwest not kept the agreements secret, the matter would have been addressed a long time ago. Any delay is the result of Qwest’s decision to keep the agreements secret and not file them with the Commission.

Qwest argues that whether the agreements must be filed with the Commission raises complex issues that do not belong in this proceeding.⁹ The issues may be complex, but that does not mean the Commission is incapable of addressing and resolving them. The Commission deals with complex issues all the time. AT&T believes that that it is appropriate to review Qwest’s compliance with the Act within the scope of this proceeding. The FCC has made it clear that, as part of its public interest analysis, it would be interested in whether the Bell operating company (“BOC”) has failed to comply with state or federal regulations.¹⁰ Surely, violations of federal law are included within the scope of the public interest analysis. In addition, the Commission has rules that require the filing of interconnection agreements with the Commission for approval.¹¹

Qwest wishes to characterize the contracts as “business-to-business administrative procedures at a granular level,”¹² “agreements settling historical disputes,” “agreements falling outside the scope of sections 251 and 252,”¹³ and, finally, provisions related to compliance with Minnesota orders.¹⁴ Qwest also argues that AT&T has failed to

⁸ *Id.*

⁹ *Id.* at 4.

¹⁰ *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298 (rel. Aug. 19, 1999), ¶ 397.

¹¹ *Ariz. Adm. Code*, R14-2-1506.

¹² *Opposition* at 6.

¹³ *Id.* at 7.

¹⁴ *Id.*

articulate any "economic or non-economic harms." It may help to review some of the provisions of the agreements that were not filed.

ESCHELON AGREEMENTS

- 1) Qwest located a "Coach and a Service Delivery Coordinator" on Eschelon premises to dedicate a special provisioning team to handle Eschelon's orders. ¶¶ 11 and 12 of Eschelon Agreement No. 1;¹⁵ Eschelon Agreement No. 2.¹⁶
- 2) Eschelon had special dispute resolution provisions not contained in the SGAT or any interconnection agreements involving escalation to Qwest VPs and maybe even the CEO. Also provided for quarterly executive meetings. §3 of Eschelon Agreement No. 3.¹⁷
- 3) Qwest credited Eschelon \$13 per platform line per month "(f)or any month (or partial month)...during which Qwest fails to provide accurate daily usage information for Eschelon's use in billing switched access." ¶ 3 of Eschelon Agreement No. 4.¹⁸ Qwest later increased this to \$16 per platform line per month as well as a joint audit process between the companies for switched access data. Eschelon Agreement 5.¹⁹
- 4) Qwest agreed to pay Eschelon \$2 per line per month for Qwest's IntraLATA toll traffic terminating to customers served by an Eschelon switch, subject to true up. Eschelon Agreement No. 4.
- 5) Qwest agreed to establish a service account team for Eschelon to meet weekly, and to provide an electronic data base processing change information. §2.1-2.1.3. of Eschelon Agreement No. 4.²⁰
- 6) Qwest and Eschelon calculated local usage charges associated with UNE-P local switching based on Eschelon's interLATA and intraLATA toll traffic. § 3.1 and Attachment 3 to Eschelon Agreement No. 4.
- 7) Eschelon and Qwest agreed to track and report performance measurements and to hold monthly and quarterly meetings regarding same. ¶4 of Eschelon Agreement No. 4.

¹⁵ Stipulation between ATI and U S WEST dated February 28, 2000 ("Eschelon Agreement No.1").

¹⁶ Trial Agreement between Qwest and Eschelon dated July 14, 2000 ("Eschelon Agreement No.2").

¹⁷ Letter dated November 15, 2000, from Greg Casey, Qwest, to Richard A. Smith, Eschelon ("Eschelon Agreement No. 3").

¹⁸ Confidential Amendment to Confidential/Trade Secret Stipulation between Qwest and Eschelon dated November 15, 2000 ("Eschelon Agreement No. 4").

¹⁹ Letter dated July 3, 2001, from Audrey McKenney, Qwest, to Richard A. Smith, Eschelon ("Eschelon Agreement No. 5").

²⁰ Qwest/Eschelon Implementation Plan dated July 31, 2001 ("Eschelon Agreement No. 6").

COVAD AGREEMENT

1) Qwest agreed to provide "90% of Covad's FOC dates within 48 hours of receipt of properly completed service requests for POTS unbundled loop services" and to notify Covad of "any facility shortages for DSL capable, ISDN capable and DS1 capable services within the same 48 hour period. Qwest also agreed to provide 90% of Covad's FOC dates within 72 hours of receipt of properly completed service requests for DSL capable and DS1 capable unbundled loop services, and as part of the FOC process to dispatch a technician to verify the existence of suitable facilities. Section 1 of the U S WEST/Covad Agreement dated April 19, 2000.

2) Qwest agreed to provide Covad with "unbundled loop service that does not require loop conditioning...at least 90% of the time" and "line sharing service (access to the high-frequency spectrum network element) at least 90% of the time within the interval set forth in any line sharing agreement between Covad and U S WEST." Section 2 of the U S WEST/Covad Agreement.

3) Qwest agreed to "reduce the incidence of failure on new Covad circuits to less than 10% failure" within 30 calendar days. Section 3 of the U S WEST/Covad Agreement.

4) Qwest agreed to complete line conditioning within 24 days or less 90% of the time. Section 4 of the U S WEST/Covad Agreement.

It is well known that Qwest failed the testing and retesting of Qwest's provisioning of Daily Usage Files ("DUF"). Yet, Qwest agreed to provide Eschelon a credit of \$13.00 per platform, later increased to \$16.00, if Qwest failed to provide accurate DUF information for Eschelon's use in billing switched access. This is a per line credit. AT&T is now providing UNE-P business service in Arizona. It certainly would like to obtain a similar credit, considering Qwest has repeatedly failed DUF testing. This is definitely an economic harm to AT&T and is definitely discriminatory. This is an essential term regarding the provision of network elements and should have been available to all CLECs on a non-discriminatory basis. AT&T does not understand how it is not in the public interest to ascertain if Qwest has cut these kind of deals with

CLECs in Arizona and not made them available to other CLECs or failed to file them with the Commission for approval.

AT&T is asking the Commission to review and determine whether these agreements should have been, and should be, filed with the Commission and be made available to the other CLECs. If this is second-guessing Qwest, so be it. But it is the Commission's responsibility to determine if Qwest's is violating the law when credible evidence is brought before it. And there is no doubt the issue can properly be brought up *in the context of the proceeding*, as the FCC has made it clear it is interested in the failure of the BOC to comply with state and federal regulations.

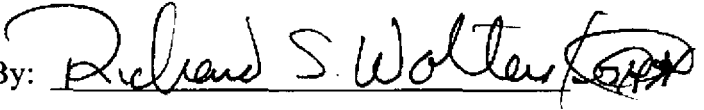
AT&T is not the cause of any delay. It was the failure by Qwest to file the agreements which may cause any delay. AT&T raised the issue in Arizona as soon as possible after receiving notice and copies of the redacted agreements.

AT&T believes that Qwest's approach to classifying agreements severely undermines the purpose of the federal Act. Selected CLECs should not be able to negotiate deals for discounted rates or special services while other CLECs cannot. This is discrimination pure and simple.

THEREFORE, AT&T respectfully requests that the Commission order Qwest to file as exhibits in this proceeding, all agreements made by Qwest since the effective date of the Act, in non-redacted form, whether currently in effect or terminated for whatever reason, that are related to the provision of interconnection, services and network elements in the state of Arizona under section 251 of the Act.

Respectfully submitted this 21st day of March 2002.

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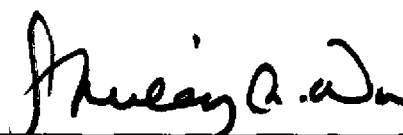
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